

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UNITED STATES OF AMERICA

v.

JAMES EVERETT SCUDDAY

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Case No. 2:-10-CR-7-1- JRG-RSP

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

On January 22, 2013, the undersigned held a final hearing on the Government's petition (#40) to revoke supervised release. The Government was represented by Assistant United States Attorney Allen Hurst. The Defendant, JAMES EVERETT SCUDDAY, was represented by Jason Cassel.

JAMES EVERETT SCUDDAY was sentenced on January 5, 2011, before The Honorable U.S. District Judge T. John Ward of the Eastern District of Texas – Marshall Division, after pleading guilty to the offense of Possession of a List 1 Chemical with Intent to Manufacture Methamphetamine, a Class C Felony. This offense carried a statutory maximum imprisonment term of not more than 20 years. The guideline imprisonment range, based on a total offense level of 27 and a criminal history category of I, was 70 to 87 months. JAMES EVERETT SCUDDAY was subsequently sentenced to 18 months imprisonment to be followed by a 3-year term of supervised release, subject to the standard conditions of release, plus special conditions to include financial disclosure and drug aftercare. On September 6, 2011, JAMES EVERETT SCUDDAY completed his period of imprisonment and began service of his supervision term.

On January 16, 2013, this petition to revoke was filed. In its petition, the Government alleges the Defendant violated the following conditions:

1) Mandatory: The Defendant shall refrain from any unlawful use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. Specifically, the Government alleges as follows: On September 6 and December 18, 2012; and January 2, 2013, Mr. Scudday submitted urine specimens that tested positive for methamphetamine and/or marijuana.

The Court scheduled a revocation hearing for January 22, 2013. At the hearing on the Government's petition, and after consenting to the undersigned taking the plea, the Defendant pled true to the allegations as set forth above. Based on the Defendant's plea of true to the allegations, and with no objection by the Defendant or the Government, the undersigned found that the Defendant did violate conditions of his supervised release, as alleged in the U.S. Probation Office's petition.

The undersigned thereafter recommended that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for 4 months, with no supervised release to follow such term of imprisonment. Based on the foregoing, it is

RECOMMENDED that the Defendant's plea of true to the allegations, as set forth in the Government's petition, be **ACCEPTED**. Based upon the Defendant's plea of true to the allegations, it is further recommended that the Court find that the Defendant violated the conditions of his supervised release. It is further

RECOMMENDED that the Defendant's supervised release be **REVOKED**. It is further **RECOMMENDED** that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of 4 months, with no supervised release to follow such term

of imprisonment. It is further

REQUESTED that the Court request that the Bureau of Prisons place the Defendant in its Texarkana, Texas facility.

At the close of the January 22, 2013 revocation hearing, Defendant, defense counsel, and counsel for the Government each signed a standard form waiving their right to object to the proposed findings and recommendations contained in this report, consenting to revocation of supervised release as recommended herein and to the imposition of the above sentence. Defendant also waived his right to be present and speak before the District Judge imposes the recommended sentence. Therefore, the Court may act on the findings and recommendation immediately.

SIGNED this 24th day of January, 2013.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE